

Supreme Court of the United States

October Term, 1976

No. 76-100

THE VIDEO COMPANY, a Missouri corporation,

Petitioner,

vs.
UNITED VIDEO INC., a Missouri corporation,

LARRY E. STONE and STONE INVESTMENTS, INC.,

a Missouri corporation.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIFE IN SUPPORT OF PETITION

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-156

THE VENDO COMPANY, a Missouri corporation,
Petitioner,

vs.

LEKTRO-VEND CORP., a Delaware corporation,
HARRY B. STONER and STONER INVESTMENTS, INC.,
a Delaware corporation,
Respondents.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Seventh Circuit

REPLY IN SUPPORT OF PETITION

The respondents' brief in opposition only serves to underscore the need for review by this Court.

As pointed out in the petition for certiorari, this is the first case in which any federal court ever held that § 16 of the Clayton Act "expressly authorizes" federal injunctions against state court proceedings as an exception to 28 U.S.C. § 2283. It is also the first to hold that such an action is not subject to established principles of comity and federalism. On both these critical issues, as examination of respondents' brief confirms, the decision below directly conflicts with decisions of other Courts of Appeals.

Respondents and the Court below also seriously err in asserting that the exclusive federal jurisdiction granted by § 16 over original claims for antitrust injunctive relief suffices to meet the standard of *Mitchum v. Foster*, 407 U.S.

225 (1972), for determining whether a federal statute “expressly authorizes” injunctions against state court proceedings. Moreover, the test adopted by the Court of Appeals would lift the restraints of § 2283 not only where an injunction is sought under § 16 of the Clayton Act but also where suit is brought under any other statute providing for an equitable remedy in the federal courts.

Throughout their brief, respondents again and again repeat their astonishing central contention that Vendo’s state court suit was nothing more than an “abuse of the judicial process” brought solely to “harass” them in violation of the federal antitrust laws. Yet they admit, as they must, that this alleged “abuse” resulted in judgments in Vendo’s favor of more than \$7,500,000, that those judgments were unanimously affirmed by the Supreme Court of Illinois, and that this Court thereafter denied certiorari (420 U.S. 975).^{*} Whatever may be the propriety of re-

^{*} Respondents do not and cannot cite any authority supporting the proposition that such *eminently successful* litigation falls within the “mere sham” exception which this Court in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972), indicated was outside the protection of the *Noerr-Pennington* doctrine. Respondents also simply ignore the obvious fact that an isolated suit, brought by a single party not acting in concert with anyone else, cannot possibly be characterized as a “combination of entrepreneurs to harass and deter their competitors from having ‘free and unlimited access’ to the agencies and courts,” the situation dealt with in *California Motor Transport*, *supra*, 404 U.S. at 515. Furthermore, in its subsequent decision in *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973), this Court expressly recognized that the institution of litigation is protected from antitrust liability under the *Noerr-Pennington* doctrine except where the purpose of such litigation to suppress competition is “evidenced by *repetitive lawsuits carrying the hallmark of insubstantial claims and thus within the ‘mere sham’ exception . . .*” (410 U.S. at 380, italics added).

In any event, *California Motor Transport* does not remotely purport to authorize federal *injunctions* even against state proceedings of the “mere sham” variety.

spondents’ attack on the state suit in their treble-damage action, the relief granted below—a federal injunction barring enforcement of final state judgments affirmed by the Illinois Supreme Court—violates fundamental precepts of federal-state relations.

Indeed, the present litigation presents a particularly striking example of the serious dangers inherent in the general relaxation of the restraints of § 2283 and of comity and federalism which has been advocated by respondents and approved by the Court of Appeals. Not only do respondents attack the final, fully reviewed judgments of the state courts on grounds which they could have presented to the state courts by way of defense, but the respondents do so on grounds which they actually *did* present, which the state courts held they were *entitled* to present, and which *would have been adjudicated* by the state courts except for respondents’ *deliberate withdrawal* of those issues from the state proceeding. Respondents thus seek (and so far have been permitted) to nullify, by way of a federal injunction, the results of state court proceedings in which they were given a full and fair opportunity to present the very issues which they asserted many years later as grounds for the injunction.

To permit this new avenue of appeal from a final state court judgment to a federal district court would undermine the integrity of state judicial processes and thrust the state and federal courts into the very sort of direct opposition which § 2283 was designed to prevent. It also would—as this “Bleak House” case dramatically illustrates—significantly contribute to indefensible delay in the disposition of litigation.

A. The Direct Conflict between Circuits Is Beyond Dispute.

1. The Conflict between Circuits on Whether § 16 of the Clayton Act "Expressly Authorizes" Injunctions Against State Court Proceedings under 28 U.S.C. § 2283.

Respondents for all practical purposes concede that the holding of the Court of Appeals directly conflicts with the decision of the Second Circuit in *Lyons v. Westinghouse Electric Corp.*, 201 F.2d 510 (2d Cir.), *cert. denied*, 345 U.S. 923 (1953), and with the decision of the Fourth Circuit in *Potter v. Carvel Stores of New York, Inc.*, 314 F.2d 45 (4th Cir. 1963). Both Courts of Appeals—in direct conflict with the Seventh Circuit's decision in this case—squarely held that § 16 of the Clayton Act is *not* a statute which "expressly authorizes" federal injunctions against state court proceedings.

With respect to *Lyons*, *supra*, respondents have chosen to avoid even any mention of this decision of the Second Circuit in their brief.* Respondents' silence, however, does not dispel the conflict.

Respondents do mention (albeit barely) the Fourth Circuit's decision in *Potter*, *supra*. Respondents merely assert (in a single sentence) that *Potter* and eight other cases are "inapposite" because there was not "any showing that federal antitrust claims would be thwarted absent equitable

* Respondents do cite the decision of the District Court in *Lyons*, contending that it "expressly recognized that an injunction would lie when 'such restraint is absolutely necessary to preserve the integrity of the Federal court's jurisdiction' (109 F. Supp. at 925)" (Resp. Br. 20). It is obvious, however, that the quoted language refers to the "in aid of jurisdiction" exception to § 2283 and not to the "expressly authorized" exception. Both exceptions were held inapplicable in the *Lyons* litigation, whereas in this case the Court of Appeals rested its decision solely on the "expressly authorized" exception—a point which respondents confuse throughout their brief.

relief or that federal law proscribed the precise conduct sought to be enjoined" (Resp. Br. 20). The *Potter* opinions, however, say nothing of the kind. Furthermore, even apart from respondents' erroneous factual premise,* respondents' proposed distinction does not make *Potter* "inapposite". The legal question of whether § 16 "expressly authorizes" stays of state court proceedings in no way depends on whether the plaintiff has otherwise demonstrated that equitable relief is warranted in the circumstances of the particular case. In fact, there is no need to determine the applicability of § 2283 unless an injunction is otherwise warranted. Thus, whether respondents did or did not meet the other requirements for an injunction is entirely irrelevant to the "expressly authorized" question under § 2283.

On that question, despite respondents' efforts to obfuscate it, both *Lyons* and *Potter* directly conflict with the decision below.

2. The Conflict between Circuits on Whether Principles of Comity and Federalism Are Applicable to a Federal Injunction Against State Court Proceedings under § 16 of the Clayton Act.

As pointed out in the petition for certiorari (pp. 19-20), the decision below holding that principles of comity and federalism are inapplicable to an injunction issued under § 16 of the Clayton Act is in direct conflict with two decisions of the Fifth Circuit. *Red Rock Cola Co. v. Red Rock Bottlers, Inc.*, 195 F.2d 406 (5th Cir. 1952); *Response of Carolina v. Leasco Response, Inc.*, 498 F.2d 314 (5th Cir.), *cert. denied*, 419 U.S. 1050 (1974). In both cases, the Court of Appeals for the Fifth Circuit reversed § 16 injunctions granted against state court proceedings, holding that—

* It should be noted that there was not (and could not be) any finding that enforcement of the Illinois Supreme Court's decision would violate the antitrust laws; the Court below merely stated that this is what respondents "alleged" (Pet. App. 11).

even apart from § 2283—the injunctions were improper on the basis of principles of comity and federalism.

In their brief in opposition, the respondents have chosen to ignore this conflict. They do not even mention *Red Rock* with respect to the comity-federalism issue (although they fleetingly cite it with respect to § 2283—Resp. Br. 19).

As to *Response of Carolina*, they merely assert in a footnote that the decision is “inapposite since the threatened injury here was a direct result of the antitrust violation” (Resp. Br. 24). It is well established, however, that an injunction under § 16 cannot be issued except where the threatened injury was a “direct result” of the antitrust violation. See, e.g., *Mullis v. Arco Petroleum Corp.*, 502 F.2d 290, 293 (7th Cir. 1974) (per Stevens, J.); *Helpenbein v. International Industries, Inc.*, 438 F.2d 1068, 1071 (8th Cir. 1971). To suggest, as respondents do, that principles of comity and federalism are inapplicable where the requirements of § 16 are met is to argue in a circle. According to respondents’ reasoning, principles of comity and federalism would be applicable only if the “direct result” requirement is *not* met. But if that requirement is *not* met, no injunction can issue under § 16 and the comity-federalism question is not even reached.

Respondents’ brief highlights—rather than negates—the clearcut conflict between the Circuits.

B. The Decision Below Conflicts in Principle with This Court’s Decisions Construing § 2283.

Respondents gloss over the conflict in principle between the decision below and the decisions of this Court which have repeatedly held that the three limited exceptions to the “absolute prohibition” of § 2283 are to be strictly and narrowly construed. E.g., *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970); *Amalgamated Clothing Workers of America v. Richman Bros.*, 348 U.S. 511, 514-16 (1955). As pointed

out in *Mitchum v. Foster*, 407 U.S. 225, 234-35 (1972), only eight federal statutes have been held by this Court to empower the federal courts to enjoin state court proceedings. Each of these statutes either contains specific language providing for stays of state proceedings or, in the absence of such language, necessarily requires by its very nature and function that conflicting state judicial proceedings must be enjoined to achieve the statutory purpose.

Unlike this Court’s decision in *Mitchum*, the decision below does not explain how § 16 of the Clayton Act would be “frustrated” if federal courts were not empowered to enjoin state court proceedings. The Court below did not even attempt to analyze the origins and history of § 16 in the way this Court in *Mitchum* analyzed § 1983 of the Civil Rights Act. Indeed, there is not the slightest basis for the holding below that § 16 “could be given its intended scope” within the meaning of *Mitchum* only by allowing federal courts to stay state court proceedings.

In essence, the Court below held—and respondents argue here—that § 16 “expressly authorizes” injunctions against state court proceedings on the ground that the state suit would allegedly be enjoined in the absence of § 2283 and therefore the application of § 2283 would impair the exercise of equity jurisdiction *in this case*. But the whole object of § 2283 is to bar certain injunctions which might otherwise be appropriate, and plainly the possible impact on any particular case was not the kind of special situation which under *Mitchum* would justify a conclusion that a federal statute “expressly authorizes” stays of state court proceedings.

In *Mitchum*, by contrast, the Court held that § 1983 met that standard because

“The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law,

'whether that action be executive, legislative, or judicial.'" (407 U.S. at 242.)

Furthermore, in enacting § 1983, "Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights" (*ibid.*). This clearly is not the case with § 16 of the Clayton Act.

C. Respondents' Remaining Arguments Concerning § 2283 Have No Bearing on Whether § 16 of the Clayton Act "Expressly Authorizes" Injunctions Against State Court Proceedings.

Respondents also argue that § 2283 is inapplicable because "The jurisdiction of the federal courts to adjudicate federal antitrust treble damage claims is exclusive and untrammelled" (Resp. Br. 14). This argument is a *non sequitur*. The jurisdiction of the federal courts to adjudicate treble-damage claims authorized by § 4 of the Clayton Act is not disputed. The issue here relates to the federal courts' power to *enjoin* state court proceedings (and, more specifically, enforcement of final state court judgments)—not what effect the state court proceedings or judgments may have on respondents' *treble-damage* action. And the exclusive jurisdiction of the federal courts over *treble-damage* claims as well as the cases cited by respondents in this regard have no bearing whatsoever on whether § 16 of the Clayton Act "expressly authorizes" the federal courts to *enjoin* state court proceedings.

None of the three treble-damage cases cited by respondents gives the slightest support to issuance of a preliminary injunction against state court proceedings. In both *Lyons v. Westinghouse Electric Corp.*, 222 F.2d 184 (2d Cir.), *cert. denied*, 350 U.S. 825 (1955), and *Mach-Tronics, Inc. v. Zirpoli*, 316 F.2d 820 (9th Cir. 1963), the holding was that a federal antitrust action should not be stayed until a related

state case is adjudicated.* Furthermore, in the *Lyons* litigation, it had previously been held that the state court defendants could *not* obtain a federal injunction staying the state court proceeding "even though the [federal] Anti-Trust Laws are involved in both actions, as in this case." *Lyons v. Westinghouse Electric Corp.*, 109 F. Supp. 925 (S.D.N.Y. 1952), *aff'd per curiam*, 201 F.2d 510 (2d Cir.), *cert. denied*, 345 U.S. 923 (1953).

In addition, evidencing their lack of confidence in their position on the "expressly authorized" issue, respondents argue at length that "The preliminary injunction was also 'necessary in aid of' the District Court's jurisdiction within the meaning of the second exception to the Anti-Injunction Statute" (Resp. Br. 21). However, as respondents concede (*ibid.*), and as the Court of Appeals acknowledged in its opinion (Pet. App. 8), the Court of Appeals did not decide this issue. An issue not decided by the Court below can have no bearing on the need for review by this Court of the important issues which the Court below did decide. As this Court has frequently pointed out, and as recognized in Rule 19 of this Court's Rules, it is the importance of the issues actually presented which govern the exercise of this Court's certiorari jurisdiction.

In any event, respondents' "in aid of jurisdiction" argument is patently without merit. According to respondents, collection of the state judgments should be enjoined to preserve the independence of two of the three plaintiffs and to enable all three plaintiffs to use the *money instead to finance the conduct of their treble-damage action*. The short answer is that the "in aid of jurisdiction" exception to § 2283 does not permit enjoining state judgments for

* In *Twentieth Century-Fox Film Corp. v. Winchester Drive-In Theatre, Inc.*, 351 F.2d 925 (9th Cir. 1965), *cert. denied*, 382 U.S. 1011 (1966), the single question involved on appeal was what rule the federal courts should apply to govern the effect of a general release in a federal antitrust case.

such purposes. See, e.g., *In re Glenn W. Turner Enterprises Litigation*, 521 F.2d 775, 780 (3d Cir. 1975). See also *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 295-96 (1970); *Jennings v. Boenning and Co.*, 482 F.2d 1128, 1131-35 (3d Cir.), *cert. denied*, 414 U.S. 1025 (1973); *Vernitron Corp. v. Benjamin*, 440 F.2d 105, 107-08 (2d Cir. 1971).

D. The Preliminary Injunction Violates Principles of Comity and Federalism.

In direct conflict with decisions of the Fifth Circuit (*supra*, pp. 5-6), the Court below held that principles of comity and federalism were inapplicable in an action under § 16 of the Clayton Act on the ground that respondents' "exclusive remedy" was in the federal courts. In so doing, the Court mistook both the facts and the law.

The state courts expressly gave respondents a full and fair opportunity to litigate the federal antitrust issues by holding, in agreement with the position then asserted by respondents in the state court case, that the state courts had jurisdiction to consider respondents' federal antitrust defense. Respondents, however, subsequently chose to abandon that defense; requested and obtained its dismissal at the opening of the second trial in the state case in 1971 (see Resp. App. 2); and did not at any time thereafter seek to reassert that defense in the state suit.*

* Respondents' withdrawal of their defense "without prejudice" constituted, at most, a reservation of their right to reassert it prior to final judgment—not the right to reassert it after final judgment and in a different court. See Ill. Rev. Stat. Ch. 110, §§ 46, 72; *Shapiro v. Di Giulio*, 132 Ill. App. 2d 428, 434, 270 N.E. 2d 622, 627 (1971). Nor are respondents (see Resp. Br. 25) somehow relieved of the federal consequences of their withdrawal of the defense by the fact that Vendo (not surprisingly) did not object to the withdrawal. Lektro-Vend, although not a party in the state litigation, is completely controlled by and in privity with the other two plaintiffs and stands in no better position (Pet. App. 32).

Respondents nevertheless assert that they are now entitled to raise those same federal antitrust issues as grounds for a federal injunction against enforcement of the resulting state judgments. In support of their claim that principles of comity and federalism are inapplicable to an injunction under § 16, respondents cite a number of other cases which are simply irrelevant to the issues presented here. Thus, *Continental Wall Paper Co. v. Louis Voight & Sons Co.*, 212 U.S. 227 (1909) (Resp. Br. 24), merely held that the federal antitrust laws could, in some circumstances, provide a good defense to a contract claim. That case did not even remotely suggest that a state court defendant, possessed of such a defense, could forego presenting it to the state court and, after suffering an adverse judgment, nevertheless obtain a federal injunction against the judgment on the basis that he had a valid federal antitrust defense to the state claim against him. Yet that is precisely what respondents urge here.

Respondents' reliance upon the Second Circuit's 1955 opinion in *Lyons v. Westinghouse Electric Corp.*, 222 F.2d 184 (2d Cir.), *cert. denied*, 350 U.S. 825 (1955) (Resp. Br. 25-26), is entirely misplaced. That decision held that, where companion state and federal cases are in progress, both involving issues raised under the federal antitrust laws, the federal suit should not be stayed pending the conclusion of the state case. But there has been no such stay in the present instance; nor is petitioner here contesting respondents' right to pursue their treble-damage claims against petitioner in federal court. Moreover, respondents conveniently overlook the Second Circuit's other opinion in the *Lyons* case (*Lyons v. Westinghouse Electric Corp.*, 201 F.2d 510 (2d Cir.), *cert. denied*, 345 U.S. 923 (1953)), which explicitly held that the federal court was barred in precisely the same circumstances from enjoining the state proceedings.

Mercoird Corp. v. Mid-Continent Investment Co., 320 U.S. 661, 671 (1944) (Resp. Br. 26), is equally inapposite. No

injunction was at issue there, much less an injunction against a state court proceeding. The issue in that case was the *res judicata* effect of a prior federal suit on the defendant's counterclaim for antitrust treble-damages. No issue of federalism or comity between state and federal courts is presented by that case. Nor, as already stated, is petitioner here contesting respondents' right to proceed with their treble-damage claims. Only the preliminary injunction against petitioner's state court proceedings is at issue on this appeal.

E. The Decision Below Improperly Sanctions Collateral Review of the Illinois Supreme Court's Final Decision by the District Court.

In granting the preliminary injunction, the District Court candidly acknowledged that it was reviewing the Illinois Supreme Court's decision, allegedly because of the lack of any consideration of respondents' federal antitrust defense in the state courts (Pet. App. 25); and the Court of Appeals approved this procedure (Pet. App. 14). Such review was patently beyond the power of the District Court—even apart from the fact that the lack of any state court consideration of the federal antitrust issues was due to the deliberate decision of respondents themselves (*supra*, p. 10).

Respondents point to no case in which such review has ever been sanctioned. Neither the Second Circuit's 1955 opinion in *Lyons v. Westinghouse*, *supra*, nor the Ninth Circuit's decision in *Mach-Tronics, Inc. v. Zirpoli*, *supra*, (Resp. Br. 28) suggests such a possibility. As previously stated, both those decisions held that, where companion federal antitrust and state cases are proceeding simultaneously, the *federal* case should not be stayed pending the outcome of the state suit. *Neither case in any way sanctions a federal injunction against the state suit*, even where (as in *Mach-Tronics*) the federal plaintiff contends that the state suit was brought for an anti-competitive purpose.

CONCLUSION

For the reasons stated above and in Vendo's petition for writ of certiorari, the decision below not only is contrary to established law but also raises issues of broad national significance and is likely to have serious adverse effects on the relationship between state and federal courts. It is respectfully submitted that the petition should be granted.

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